

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPHIRE**

Town of Wolfeboro, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Wright-Pierce )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. 12-cv-130-JD

**JOINT MOTION TO INDEFINITELY STAY FURTHER PROCEEDINGS**

NOW COME Plaintiff Town of Wolfeboro, (“Wolfeboro”) and Defendant Wright-Pierce (“Wright-Pierce”) (collectively, “the Parties”), by and through their respective counsel respectfully move to indefinitely stay all proceedings in this action, stating as follows:

1. Since soon after the verdict in this case, the parties have engaged in settlement discussions designed to resolve the case.
2. In order to increase the chances that the settlement discussions will result in a settlement, the Parties believe that the involvement of persons not party to this lawsuit will be required.
3. The need to meaningfully engage non-parties in these settlement discussions complicates the timing of the negotiations and given the uncertainties involved makes it essentially impossible at this stage to represent to the Court just how long that process will take.
4. A number of motions are currently pending, and the post-trial motions loom not far ahead on the procedural horizon. All will require substantial time and effort. For example, objections are due to the attorneys’ fees and trebling motions by July 11th. Presumably judgment would most likely enter within roughly two weeks from submission of the objections (absent a

stay of entry of judgment to enable Wright-Pierce's new counsel to have the benefit of review of the trial transcript – currently being prepared – in preparing their post-trial motions). Once judgment is entered, the 28 day clock in Fed. R. Civ. P. 50(b), 52 and 59 will begin to run and cannot be extended. Finally, an objection to Wright-Pierce's motion to dismiss for lack of subject matter jurisdiction is presently due on or about July 14, 2014. However, an extension of the objection date is likely as counsel for Wolfeboro has indicated she will want jurisdictional discovery. All of these efforts, if they go forward, will create substantial additional legal expense for the Parties.

5. From the outset, Wright-Pierce's professional liability coverage has been considerably less than the un-multiplied amount of the damages alleged by Wolfeboro. Wright-Pierce's professional liability coverage is what is known as a "defense-within-limits" policy. The policy provides that as dollars are spent on defense, the amount of available coverage is reduced. Discovery, pre-trial motions, experts and trial of this case were expensive and the policy limits have already been substantially reduced. The information concerning the remaining coverage on the policy has been communicated to counsel for Wolfeboro.

6. Wolfeboro is, of course, a municipality and attorneys' fees come out of the Town's tax and other revenues that would otherwise be available for essential public services.

7. Anticipating that their joint stay request would be granted, counsel for the Parties have ceased substantially all work on pending motions, objections and post-trial motions, to avoid potentially unnecessary legal costs.

8. In light of all of these unique factors, the Parties request an indefinite stay designed to allow the referenced settlement discussions to occur while avoiding additional legal expense.

9. The Parties propose that counsel report to the Court on the progress of settlement discussions at thirty (30) day intervals (or at such other intervals as the Court may require), keeping in mind that the Court still has factual determinations which may need to be made and that the confidentiality of the substance of settlement communications must be maintained. To keep the Court advised, but to avoid disclosure of specific settlement communications, the Parties propose that the progress reports contemplated by this Motion would merely inform the Court if progress is being made and if maintaining the stay is warranted.

10. If settlement occurs, then the expenditure of additional judicial resources and attorneys' fees will have been limited.

11. If settlement does not occur, or if either party requests relief from the stay, then through a stipulation or a further status conference a scheduling order can be arrived at that (a) establishes an objection date for the attorneys' fees and trebling motions; (b) addresses the potential need to stay the entry of judgment to allow the completion of the trial transcript and its review for the post-trial motions; (c) establishes a schedule for any jurisdictional discovery to be conducted by Wolfeboro; and, (d) establishes an objection date for the motion to dismiss.

12. As indicated in the caption of this Motion, this is a joint motion and so the Parties consent to this relief.

13. In light of the nature of this Motion, the Parties submit that no memorandum of law is necessary.

14. Counsel for the Parties will be prepared to discuss this Motion at the July 8, 2014 status conference and despite the filing of this Motion request that the Court proceed with the hearing as scheduled.

15. The filing of this joint motion is without waiver of the Parties' respective positions concerning the subject matter jurisdiction issue.

WHEREFORE, the Parties pray that this Court:

- A. Grant this Motion; and,
- B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

TOWN OF WOLFEBORO

By its attorneys,

Hinckley, Allen & Snyder LLP

Date: July 2, 2014

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WRIGHT-PIERCE

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Dated: July 2, 2014

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CERTIFICATION

I hereby certify that on July 2, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ Peter S. Cowan

Peter S. Cowan